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April 21, 2003

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., TW-A325  
Washington, D.C. 20554

***Re: In the Matter of the Commission's Broadcast and Cable Equal Employment  
Opportunity Rules and Policies, MM Dkt. No. 98-204***

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(1) of the Commission's rules, the National Organization for Women, NOW Legal Defense and Education Fund, Feminist Majority Foundation, Philadelphia Lesbian and Gay Task Force, and the Women's Institute for Freedom of the Press (collectively, "NOW *et al.*") write to correct apparent misrepresentations about NOW *et al.*'s positions that were made in State Broadcasters Associations' Reply to Oppositions to Petition for Reconsideration ("STBAs' Reply") in the above-referenced proceeding.

Because the STBAs Reply exceeded the page limit, the Commission may reject their pleading without consideration.<sup>1</sup> Nonetheless, out of an abundance of caution, while NOW *et al.* do not attempt

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<sup>1</sup> Pleadings in excess of applicable page limits "will be returned without consideration." 47 C.F.R. § 148(a). Under Section 1.49(a) of the Commission's rules, "counsel are cautioned against employing extended single-spaced passages or excessive footnotes to evade prescribed pleading lengths. If single-spaced passages or footnotes are used in this manner, the pleading will, at the discretion of the Commission, either be rejected as unacceptable for filing or dismissed with leave to be refiled in proper form." Section 1.429(g) limits replies to oppositions to petitions for reconsideration to ten double-spaced typewritten pages. STBAs' filed a ten page Reply to Opposition to Petitions for Reconsideration with a single-spaced footnote of twenty-seven lines, and attached a thirty-five page "Exhibit A" and a five page "Exhibit B." See STBAs' Reply, p. 7, fn. 2 and Exhs. A. & B. Although Section 1.48(a) of the Commission's rules exempt factual materials supporting a pleading from being counted in determining the length of the pleading, STBAs' exhibits are argumentative rather than factual. See *Applications of Belo Broad. Corp. for Renewal of Broad. License & Wadeco, Inc. for Construct. Permit for New TV Broad. Station*, 61 FCC 2d 10 (1976) (explaining that the acceptance of attachments or any similar attempted incorporation by reference would clearly circumvent and undermine the fundamental purpose of the Commission's regulations and therefore, holding that the pleading was defective); see also *Teleprompter Corp., et al., Petitions for Reconsideration*, 89 FCC 2d 417 (1982) (holding that because the party's petition for reconsideration was in excess of the page limitation and the party had not requested a waiver of the limitation, the FCC would treat the pleading as merely an informal request for reconsideration and deny the petition). Further, STBAs failed to properly request a

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to fully respond to all claims and issues raised in STBAs' Reply, NOW *et al.* highlight and clarify some of the most troublesome misrepresentations below.

- **NOW *et al.* support use of the Internet, particularly as part of a flexible EEO program that utilizes a variety of outreach methods.** Contrary to STBAs' claims, NOW *et al.* strongly *encourage* the use of Internet recruitment, especially when used in conjunction with other traditional forms of outreach. NOW's Opposition to Petitions for Reconsideration, MM Dkt No. 98-204, dated March 24, 2003, pp. 5-6 ("NOW's Opp."); *see* STBAs' Reply, p. 3. NOW *et al.* had only asked the Commission to reject STBAs' proposal that broadcasters receive additional Prong 3 menu option credit for the development of Career Page web sites because broadcasters may post job openings on their web sites to recruit for vacancies as part of their Prong 1 wide dissemination requirement and already receive EEO credit for this activity. Thus, adoption of STBAs' proposal would actually lessen the total amount of broadcaster outreach by permitting the very same activity to satisfy both dissemination and supplemental recruiting measures.
- **NOW *et al.* has specifically opposed codification of the "exigent circumstances" exception and the STBAs' proposed definition of the exception.** STBAs incorrectly state that NOW *et al.* has not objected to STBAs' request to codify the "exigent circumstances" exception and that NOW *et al.* has only opposed STBAs' proposed definition of the exception because the definition was a potential loophole. STBAs' Reply, Exh. A, p. 4, 30. Contrary to STBAs' claims, NOW *et al.* has argued that the exception should not be codified because the Commission wants to keep the exception flexible, narrowly tailored, and seldom used. More importantly, NOW *et al.* has explained that STBAs' definition would have essentially provided an *automatic exception*, not a mere loophole, enabling any broadcaster to evade the new EEO Rule. NOW's Opp., p. 14.
- **NOW *et al.* has provided other ample support in addition to Eduardo Pena's estimates to demonstrate that the new EEO requirements are not burdensome.** Despite STBAs' claims that NOW *et al.* has solely relied on Pena's statement, NOW *et al.* has pointed out that (1) broadcasters only have to act in good faith, (2) broadcasters have access to many resources to guide them on EEO compliance, including forms and assistance from the National Association of Broadcasters, and (3) that the Commission has already found that burden complaints were unsubstantiated by the record. NOW's Opp., pp. 8-9.
- **NOW *et al.* support the Commission's requirement for reporting of all referral sources in a station employment unit's (SEUs) public file report.** Contrary to STBAs' claim, NOW *et al.* has opposed STBAs' request to only require SEUs to report sources which have asked to be placed on a SEU's mailing list and not those to which job listings are sent generally. Limiting reporting as STBAs suggest would prevent SEUs, the Commission, and the public from effectively analyzing and refining recruitment efforts to achieve broad outreach. STBAs' Reply, Exh. A, p. 22; NOW's Opp., pp. 20-21.
- **NOW *et al.* support the Commission's rule requiring reporting of interviewee and hiree data.** NOW *et al.* has argued that STBAs' request to eliminate reporting of the referral sources of all interviewees and hirees in the EEO public file report would prevent SEUs, the

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motion to exceed the page limitation under Rule 1.48(b). In any event, "[i]t is the policy of the Commission that requests for permission to file pleadings in excess of the length prescribed . . . shall not be routinely granted." 47 CFR 1.48(b) (2003).

Commission and the public from tracking which sources were productive in generating qualified applicants. NOW's Opp., p. 21. However, in their "summary" of record objections for the Commission, STBAs fail to mention NOW *et al.*'s opposition to STBAs' request, implying that NOW *et al.* did not object to the request. STBAs' Reply, Exh. A, p. 25.

- **NOW *et al.* oppose classifying student interns as temporary employees or non-employees for purposes of the EEO Rule.** NOW *et al.* has specifically argued that students should not automatically be considered temporary or non-employees because many work for substantial periods of time. NOW's Opp., p. 22. Again, however, STBAs fail to mention NOW *et al.*'s opposition to STBAs' classification of student interns, implying that NOW did not object to the classification request. STBAs' Reply, Exh. A, p. 29.
- **NOW *et al.* oppose counting those with whom broadcasters have only had e-mail contact in the number of interviewees for a job vacancy.** Contrary to STBAs' claims, NOW *et al.* has taken no position regarding the need to hear someone's voice. STBAs' Reply, Exh. A, p. 8. Instead, NOW *et al.* has argued that a mere e-mail to reject or otherwise contact applicants does not constitute true outreach to the community as sought by the Commission. NOW's Opp., p. 17.

In addition to the issues discussed above, the STBAs addressed many issues for the first time in their Reply to Petition for Reconsideration, effectively depriving the public of the opportunity to fully and fairly comment on the arguments. STBAs' new arguments, among others, include issues regarding: (1) continuous changes in number of full-time employees, (2) unintentional discrimination, (3) treatment of inter-company employees, (4) promotion of interns, (5) and requirements of union agreements. STBAs' Reply, Exh. A, pp. 1, 2, 7, 8.

Not only did STBAs unfairly represent NOW *et al.*'s position and raise new arguments for the first time in their Reply, STBAs abused the Commission's rules to do so. NOW *et al.*, therefore, urge the Commission to take any appropriate action to ensure the integrity of the rule making process and protect the public interest.

Please do not hesitate to contact me at 202-662-9545 or [arw9@law.georgetown.edu](mailto:arw9@law.georgetown.edu) should you have any questions or if I can be of further assistance.

Sincerely,

Amy R. Wolverton

cc: Richard R. Zaragoza (Shaw Pittman)  
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Paul A. Cicelski (Shaw Pittman)  
Chairman Michael Powell (FCC)  
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